Jas Reed

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~1059.~~ ~~653~~ 396

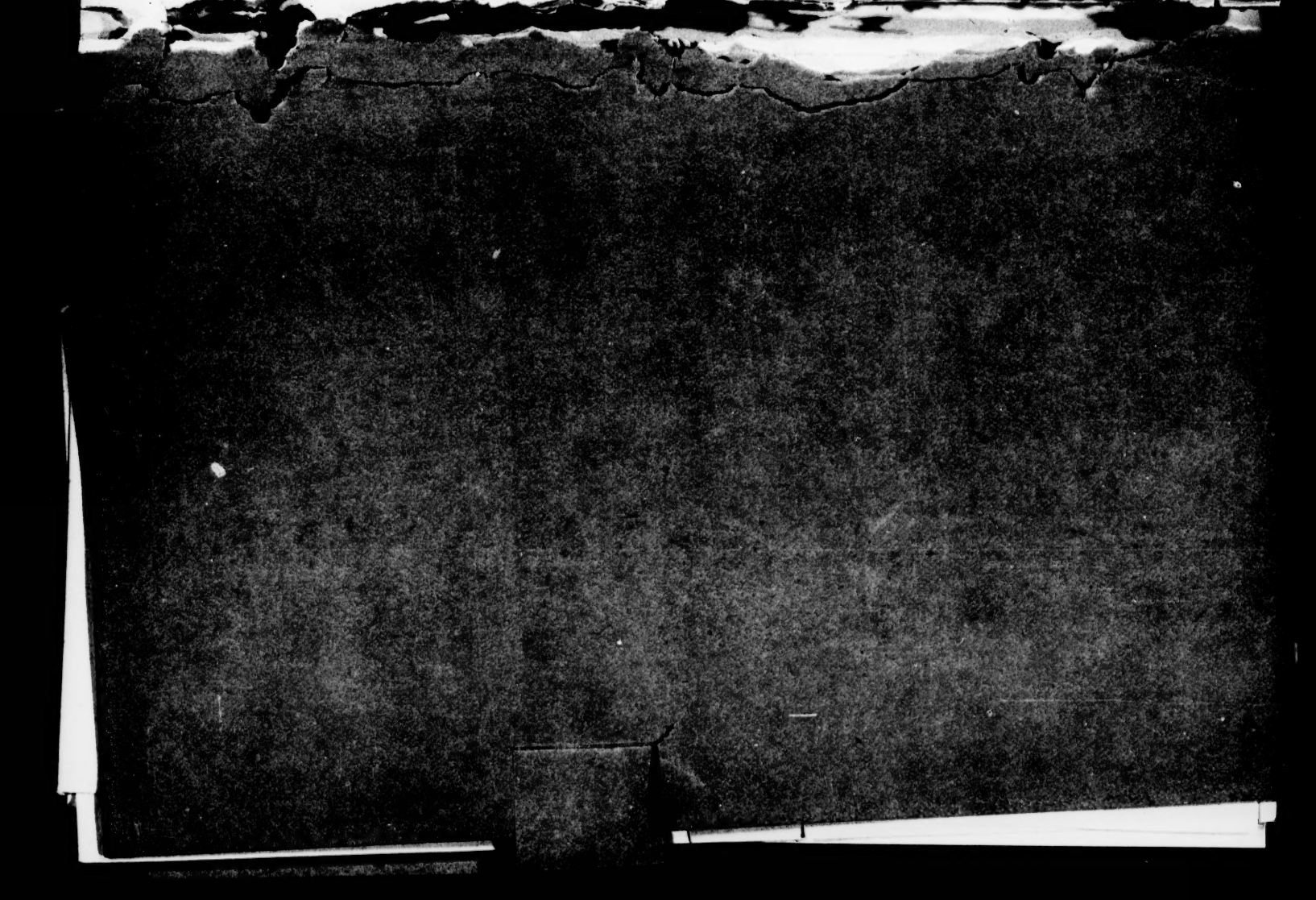
THE BUFFALO AND JAMESTOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WALTER J. WEEKS, JUDSON M. BREED, EDWARD P. JONES, AND ROBERT NEWLAND.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED MARCH 25, 1878.



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UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the supreme court of the State of New York, in the fourth judicial department of said State, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, in a plea which is in the said supreme court of the State of New York before you or some of you, having been thereto remitted by the court of appeals of said State of New York after the decision and judgment rendered by said court of appeals by the judges thereof, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between the Buffalo & Jamestown Railroad Company, plaintiff and appellant, and Walter J. Weeks, Judson W. Breed, Edward P. Jones, and Robert Newland, defendants and respondents, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United
2 States, and the decision was in favor of such their validity: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done further therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this nineteenth day of March,
3 in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] D. W. MIDDLETON,
*Clerk Supreme Court U. S.*

STATE OF NEW YORK,
*Chautauqua County Clerk's Office, ss:*

The answer of the judges of the supreme court of the State of New York for the fourth judicial department of said State:

A transcript of the record and judgment of this court, together with all things touching or in any wise concerning the same, we certify and return under the seal of our said court to the Supreme Court of the United States and to the justices thereof, as we are above commanded.

By the court.

[SEAL.] J. J. ALDRICH, *Clerk.*

4 (Indorsed:) U. S. Supreme Court. The Buffalo & Jamestown Railroad Company & others, pl'ffs in error, ag'st Walter J. Weeks & others, def'ts in error. Writ of error. Bass, Cleveland & Bissell, att'ys for pl'ffs in error.

The within writ is allowed this 18th of March, 1878.

WARD HUNT,
*Asso. Just. Sup. Ct U. S.*

A copy of this original writ error filed this 22nd March, 1878, for use of def'ts in error.

J. J. ALDRICH, *Clerk.*

5 UNITED STATES OF AMERICA:

To Walter J. Weeks, Judson W. Breed, Edward P. Jones, and Robert Newland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York for the fourth judicial department, it being the clerk's office of the county of Chautauqua, in said State, wherein the Buffalo and Jamestown Railroad Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of March, in the
6 year one thousand eight hundred and seventy-eight.

WARD HUNT,
*Asso. Just. Sup. C't U. S.*

(Indorsed:) Supreme Court U. S. The Buffalo and Jamestown Railroad Company, pl'ffs in error, vs. Walter J. Weeks and others, def'ts in error. Citation. Bass, Cleveland & Bissell, att'ys for pl'ff in error.

I hereby admit service of the within citation this 21st day of March, 1878.

PORTER SHELDON,
*Att'y for Def'ts.*

7 Know all men by these presents that we, James Adams and Henry R. Jones, of the city of Buffalo and State of New York, are held and firmly bound unto Walter J. Weeks, Judson W. Breed, Edward P. Jones, and Robert Newland in the sum of five hundred dollars, to be paid to the said Walter J. Weeks, Judson W. Breed, Edward P. Jones, and Robert Newland, their executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Whereas the Buffalo and Jamestown Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered in the court of appeals of the State of New York in favor of the above-named obligees, defendants and respondents, and against the said The Buffalo and Jamestown Railroad Company, plaintiff and appellant.

Now, therefore, the condition of this obligation is such that if
8 the above-named The Buffalo and Jamestown Railroad Company, plaintiff and appellant, shall prosecute its said writ of error to effect, and shall answer all costs if it shall fail to make its plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue. Sealed with our seals and dated this 15th day of March, one thousand eight hundred and seventy-eight.

JAMES ADAMS. [L. S.]
HENRY R. JONES. [L. S.]

UNITED STATES OF AMERICA,
*Northern District of New York, ss:*

James Adams and Henry R. Jones, being severally duly sworn, says, each for himself, that he is a resident and freeholder within the State of New York, and worth the sum of one thousand dollars over and above all the debts and liabilities he owes or has incurred, and in property not exempt from levy & sale on execution.

JAMES ADAMS.
HENRY R. JONES.

Sworn to before me March 16, 1878.

EDWARD W. GAYES,
*Notary Public, Erie County, N. Y.*

9 UNITED STATES OF AMERICA,
*Northern District of New York, ss:*

On this 16th day of March, A. D. 1878, personally appeared before me James Adams and Henry R. Jones, to me severally known to be the persons mentioned and described in and who executed the foregoing bond, and severally acknowledged that they had executed the same.

[L. S.] EDWARD W. HAYES,
*Notary Public, Erie County, N. Y.*

Bond and sureties approved this 18th of March, 1878.

WARD HUNT,
*Asso. Just. Sup. C't U. S.*

Filed March 22, 1878.

10 Supreme court.

THE BUFFALO AND JAMESTOWN RAILROAD Company, plaintiff, *against* WALTER J. WEEKS, JUDSON W. BREED, AND Edward P. Jones, commissioners, &c., & Robert Newland, defendants. } Agreed case and submission.

Bass, Cleveland & Bissell, plaintiff's attorneys; Porter Sheldon, defendants' attorney.

Erie special term, October 27, 1877.

Read, on motion, and ordered filed in Chautauqua County.

S. S. OATMAN,
*Sp. Dp. Clerk.*

Filed Oct. 31, 1877.

11 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 22d day of May, in the year of our Lord one thousand eight hundred and seventy-seven, before the judges of said court.

Witness the Hon. Sanford E. Church, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur, May 23, 1877.

THE BUFFALO & JAMESTOWN RAILROAD COMpany, appellants,
*ag'st*
WALTER J. WEEKS & OTHERS, RESPONDENTS.

Be it remembered that, on the sixth day of June, in the year of our Lord one thousand eight hundred and seventy-six, the Buffalo & Jamestown Railroad Company, the appellant in this action, came here into the court of appeal', by Bass, Cleveland & Bissell, its attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State
12 of New York, and Walter J. Weeks & others, the respondents in said action, afterwards appeared in said court of appeals, by Porter Sheldon, their attorney, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by M'r Geo. F. Comstock, of counsel for the appellant, and M'r R. P. Marvin, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from this action be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according
13 to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

E. O. PERRIN,
*Clerk of the Court of Appeals of the State of New York.*

COURT OF APPEALS, CLERK'S OFFICE,
*Albany, May* 23, 1877.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[L. S.] E. O. PERRIN, *Clerk.*

14 Supreme court.

THE BUFFALO AND JAMESTOWN RAILROAD Company, plaintiff,
*against*
WALTER J. WEEKS, JUDSON W. BREED, AND Edward P. Jones, commissioners to issue bonds for the town of Ellicott, and Robert Newland, defendants.

A question in difference, which might be the subject of a civil action,

having arisen between the above-named parties, they hereby agree upon the following case containing the facts upon which the controversy depends, and submit the same to the supreme court of the State of New York for its determination.

*Facts.*

The plaintiff, The Buffalo and Jamestown Railroad Company, is a corporation within the State of New York, duly created under the general laws of said State, for the purpose of constructing a railroad from the city of Buffalo in said State, to the Pennsylvania State line, in the county of Chautauqua.

That in the month' of April and May, 1872, under and in pursuance of chap. 907 of the laws of New York, passed May 18th, 1869, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April 2d,
15 1850, so as to permit municipal corporations to aid in the construction of railroads," and the various acts amendatory thereof and supplementary thereto, such proceedings were had, that the defendants, Weeks, Breed, and Jones, were duly appointed commissioners, and duly authorized to issue the bonds of the town of Ellicott, in said county of Chautauqua, in the sum of two hundred thousand dollars, and invest the same or the proceeds thereof in the stock of said railroad company to aid in the construction of its said road, upon the conditions stated and set forth in the petition in said proceedings, and of which petition, except the signatures thereto, the following is a copy:

To the honorable the county judge of Chautauqua County, New York:

Your petitioners respectfully show unto your honor that they are a majority of the taxpayers of the town of Ellicott, in said county of Chautauqua, who are taxed or assessed for property upon the last preceding assessment-roll and tax-list of said town, and that your petitioners are assessed and taxed for and represent a majority of the taxable property upon said assessment-roll and tax-list, and that none of your petitioners are taxed upon said assessment-roll and tax-list for dogs and highway tax only.

And your petitioners desire that the said town of Ellicott shall create and issue its bonds to the amount of two hundred thousand dollars, and invest the same or the proceeds thereof in the stock of the Buffalo and Jamestown Railroad Company, upon the conditions that the line of the railroad of said company to be constructed from the city of Buffalo to the line of the State of Pennsylvania, in said county, shall be located and constructed through the village of Jamestown, in said town of Ellicott, before said bonds shall be delivered to said company or sold.

16 And your petitioners further show that the taxable property of said town of Ellicott, as appears by the last assessment roll and tax-list, is the sum of one million four hundred and eleven thousand eight hundred and sixty-nine dollars.

Wherefore your petitioners pray that your honor will take such proceedings in the premises as is required by law, to the end that such bonds may be created and issued by the said town of Ellicott for the purpose and upon the conditions aforesaid.

Dated March 25th, 1872.

That at the judgment in said proceedings was duly entered of record in

the clerk's office of Chautauqua County on the twentieth day of May 1872, of which judgment record the following is a copy:

IN THE MATTER OF THE ISSUING OF THE BONDS of the town of Ellicott, in the county of Chautauqua, to aid in the construction of the Buffalo and Jamestown Railroad Company's railroad.

A petition having been presented to me, E. F. Warren, county judge of Chautauqua County, April 27, 1872, verified by one of the petitioners, setting forth that said petitioners are a majority of all the taxpayers of the town of Ellicott, in the county of Chautauqua, who are taxed or assessed for property upon the last preceding assessment roll and tax-list of said town, and that said petitioners are assessed and taxed for and represent a majority of the taxable property upon said assessment
17 roll and tax-list, and that none of said petitioners are taxed upon said assessment roll and tax-list for dogs or highway tax only, and that said petitioners desire that the said town of Ellicott shall create and issue its bonds to the amount of two hundred thousand dollars and invest the same, or the proceeds thereof, in the stock of the Buffalo and Jamestown Railroad Company, upon the conditions in said petition named: that the line of the railroad of said company to be constructed from the city of Buffalo to the line of the State of Pennsylvania in said county shall be located and constructed through the village of Jamestown, in said town of Ellicott, before said bonds shall be delivered to said company or sold; and I did thereupon order that a notice be forthwith published in the Jamestown Daily Journal, directed "to whom it may concern," setting forth that on the 15th day of May, 1872, at one o'clock p. m., at the law office of Sheldon & Hall, in the village of Jamestown, in said county, I would proceed to take proof of the facts set forth in said petition as to the number of taxpayers joining in such petition, and as to the amount of taxable property represented by them.

On the said 15th day of May, 1872, at 1 o'clock p. m., the said petitioners having appeared before me, by Sheldon & Hall, their attorneys, at the law office of Sheldon & Hall, in the village of Jamestown, in said county, and having made due proof of the publication of said notice in the said Jamestown Daily Journal, fourteen times in succession, commencing on Monday, April 29th, and ending on Tuesday, May 14th, 1872, I did then and there, at the time and place named in said notice, proceed and take proof as to the said allegations in said petition; and it appearing satisfactorily to me, from such proof, that the said petitioners do represent a majority of the taxpayers of said municipal corporation, the said town of Ellicott, as shown by the last preceding tax-list and assessment roll of said town, and do represent a majority
18 of the taxable property upon said list and roll, therefore, I do adjudge and determine that said petitioners do represent a majority of the taxpayers of the town of Ellicott, in the county of Chautauqua, as shown by the last preceding tax-list and assessment roll, and do represent a majority of the taxable property upon said list and roll.

Let this judgment be entered of record in the clerk's office of the county of Chautauqua. I do hereby appoint Judson W. Breed, Edward P. Jones, and Walter J. Weeks, freeholders, residents, and taxpayers of the said town of Ellicott, commissioners for the purpose mentioned in said petition, and pursuant to statute in such case made and provided.

Dated May 16, 1872.

E. F. WARREN,
*County Judge of Chautauqua County.*

That the said defendants, Weeks, Breed & Jones, accepted the office of commissioners, under said judgment, duly qualified as such commissioners, and have ever since that time acted and still continue to act as such commissioners.

That on the fourteenth day of June, 1872, the plaintiff, the Buffalo and Jamestown Railroad Company, entered into an agreement with said commissioners, of which the following is a copy:

This agreement, made and entered into this fourteenth day of June, in the year one thousand eight hundred and seventy-two, by and between Judson W. Breed, Walter J. Weeks, and Edward P. Jones, as commissioners of the town of Ellicott, in the county of Chautauqua and State of New York, as party of the first part, and the Buffalo and Jamestown Railroad Company, a railroad corporation created and existing under and by virtue of the laws of said State, as party of the second part, witnesseth:

That whereas the said Judson W. Breed, Walter J. Weeks, and Edward P. Jones were heretofore appointed commissioners of the said town of Ellicott by the county judge of the county of Chautauqua, under and pursuant to the provisions of chapter nine hundred and seven, of the laws of eighteen hundred and sixty-nine, and of the laws supplementary thereto and amendatory thereof, for the purposes designated by said laws, with authority to make and execute the bonds of the said town of Ellicott, to the amount of two hundred thousand dollars, and to invest the same, or the proceeds thereof, in the stock of the said The Buffalo and Jamestown Railroad Company, upon certain terms and conditions:

Therefore, in pursuance of the statutes of the State of New York in such case made and provided, the said Judson W. Breed, Walter J. Weeks, and Edward P. Jones, as such commissioners as aforesaid, for themselves as such commissioners, their successors in office, and assigns, do agree to and with the said party of the second part, that when the said party of the second part shall have located and constructed through the village of Jamestown, in the said town of Ellicott, the proposed railroad of the said company, running from the city of Buffalo to the Pennsylvania State line in the said county of Chautauqua, the said party of the first part, as such commissioners, or their successors in office, will thereupon immediately subscribe, in the name of the said town of Ellicott, to the capital stock of the said The Buffalo and Jamestown Railroad Company, to the amount of two hundred thousand dollars, and will pay for the said stock by delivering to the said company the bonds of the said town of Ellicott in the amount of two hundred thousand dollars, which bonds shall be made and executed by the said party of the first part, or their successors in office, in due form of law, and by them be duly signed, sealed, and certified; that the said bonds shall be made payable in the city of New York, and in such denominations as shall be required by the said party of the second part, not to exceed the denomination of ten thousand dollars, and shall bear date as of the time of such subscription to the stock of the said company as aforesaid, and the interest thereon, at and after the rate of seven per cent. per annum, shall be made payable semi-annually on the first days of January and July in each year.

And in consideration of the premises, the said party of the second part, for itself, its successors, and assigns, does hereby agree to and with the party of the first part and their successors in office, that the party of the second part will, in manner and form hereinbefore specified, receive the subscription aforesaid of the said party of the first part to

the said capital stock in the said sum of two hundred thousand dollars, and will receive in payment therefor the said bonds of the said town of Ellicott to the amount of two hundred thousand dollars, created and issued by the said commissioners in manner and form aforesaid in due form of law, and will thereupon issue and deliver to the party of the first part, in due form, the certificates representing the amount of the capital stock so subscribed and paid for as aforesaid.

The parties of the first part refer to the petition and proceedings under which they were appointed such commissioners as aforesaid, and do not undertake or agree to perform the conditions of this contract, except as they are empowered and authorized so to do by said petition and proceedings and the statute in such case made and provided.

In witness whereof the said commissioners, party of the first part, have hereunto set their hands and seals, and the said party of the second part has hereunto affixed its common seal, and caused these
21 presents to be attested by the signature of its president and secretary, on the day and in the year first above written.

JUDSON W. BREED, [L. S.]
W. J. WEEKS, [L. S.]
EDWARD P. JONES. [L. S.]
*Commissioners as aforesaid.*

J. M. RICHMOND,
*President Buffalo and Jamestown Railroad Company.*
[L. S.] PETER C. DOYLE,
*Secretary Buffalo and Jamestown Railroad Company.*

That on or about the twenty-sixth day of August, 1874, the said commissioners caused to be prepared, and did sign and execute as such commissioners, the bonds of the said town of Ellicott in due form of law, and containing the terms specified in the contract aforesaid, dated on the day last aforesaid and payable to the said railroad company or bearer, for the sum, in the aggregate, of two hundred thousand dollars, and at the request of the plaintiff delivered said bonds to the defendant, Robert Newland and Augustus F. Allen (said Allen has since departed this life), and took from said Allen and Newland a receipt showing the terms and conditions under which they were to hold said bonds, and the disposition to be by them made thereof, of which receipt the following is a copy:

Whereas such proceedings have heretofore been taken under and pursuant to the provisions of chapter nine hundred and seven of the laws of 1869, and of the laws supplementary thereto and amendatory thereof, that Judson W. Breed, Edward P. Jones, and Walter J.
22 Weeks were appointed by the county judge of Chautauqua County commissioners of the town of Ellicott, in said county, to issue the bonds of said town of Ellicott in aid of the construction of the Buffalo and Jamestown Railroad Company's railroad upon certain terms and conditions set forth in the judgment in said proceedings, to the amount of two hundred thousand dollars; and whereas the said Breed, Jones, and Weeks, as such commissioners as aforesaid, did on the 14th day of June, 1872, enter into an agreement with said railroad company to subscribe to the stock of said company, and issue the said bonds of the said town in payment thereof, to the extent of two hundred thousand dollars, on certain terms and conditions in said contract set forth; and whereas the said Breed, Jones, and Weeks have this day placed in our hands as trustees the bonds of the said town of Ellicott, executed by

them as such commissioners, to the extent of the sum of two hundred thousand dollars, for the following uses and purposes; that is to say: If the said The Buffalo and Jamestown Railroad Company shall, on or before the first day of January, 1876, have constructed its railroad to and through the village of Jamestown, in said town of Ellicott, upon a right of way and road-bed in which they have the title in fee-simple free and clear from all incumbrance except the mortgage-bonds of said company, said road to be first class and permanent in its construction, then we are, upon such construction being completed and upon the said commissioners having subscribed two hundred thousand dollars to the capital stock of said company and received the certificates from said company therefor, to deliver to said company the said two hundred thousand dollars in bonds of said town, in payment of such subscription, first detaching from such bonds all coupons for interest which shall have accrued on the same up to the date when said commission-
23 ers shall have subscribed for said stock, interest to commence at the date last aforesaid. Which said detached coupons we will return to said commissioners for cancellation, and in case said company shall not so construct its said railroad in manner and form and to the extent aforesaid, on or before said first day of January, 1876, we are to return said bonds to said commissioners.

The following is a more particular description of the said bonds, as received by us, to wit:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 200 | $ 100 | No. | 1—200 | inclusive, | due | July 1, | 1895 | $20,000 |
| 75 | $ 200 | " | 251—325 | " | " | " | 1896 | $15,000 |
| 50 | $ 100 | " | 201—250 | " | " | " | 1896 | $ 5,000 |
| 50 | $ 200 | " | 326—375 | " | " | " | 1897 | $10,000 |
| 20 | $ 500 | " | 376—395 | " | " | " | 1897 | $10,000 |
| 40 | $ 500 | " | 396—435 | " | " | " | 1898 | $20,000 |
| 40 | $ 500 | " | 436—475 | " | " | " | 1899 | $20,000 |
| 20 | $1,000 | " | 476—495 | " | " | " | 1900 | $20,000 |
| 20 | $1,000 | " | 496—515 | " | " | " | 1901 | $20,000 |
| 20 | $1,060 | " | 516—535 | " | " | " | 1902 | $20,000 |
| 20 | $1,000 | " | 536—555 | " | " | " | 1903 | $20,000 |
| 20 | $1,000 | " | 556—575 | " | " | " | 1904 | $00,002 |

Jamestown, Aug. 28th, 1874.

A. F. ALLEN.
ROBERT NEWLAND.

That said bonds are now in the possession of said Newland.

That before the first day of January, 1875, the said railroad company had, by survey and filing maps and profile of their said road, duly located the line of its road through the said village of Jametsown, but no other work had been done upon said road within said village or town prior to the day last aforesaid.

That the said railroad was fully completed through said village of Jamestown, in full compliance with the terms and requirements of the said contract, on the twentieth day of October, 1875, and after
24 such completion, and on the day last aforesaid, the said plaintiff requested the said commissioners to subscribe for the stock of said company as provided in said contract, and gave notice to said commissioners that it was ready and willing to deliver said stock pursuant to the terms of the contract aforesaid, and demanded of said Newland and said commissioners the bonds of said town, which had been signed and executed by said commissioners, and placed in the hands of said Allen and Newland as aforesaid.

That the said commissioners and the said Newland then refused, and still refuse, to deliver the said bonds to the railroad company, solely upon the grounds that under the provisions of the amendment to the constitution of the State of New York, known as section eleven of article eight, which went into effect January 1st, 1875, the said commissioners are not authorized to subscribe to the stock of said railroad company, but are prohibited therefrom, and are not authorized to deliver said bonds to said railroad company, but that by virtue of said provision of said constitution are prohibited therefrom.

And the parties to this submission respectfully pray this honorable court to determine, under the agreed facts above submitted:

1st. Whether the said commissioners are authorized by law, and whether it is their duty to subscribe to the stock of said railroad company, for said town of Ellicott, in the sum of two hundred thousand dollars.

2d. Whether the said commissioners or the said Newland are authorized and required by law to deliver the said bonds to the said railroad company.

And the said plaintiff asks the judgment of this court that the said commissioners be ordered and directed to subscribe for and receive the said two hundred thousand dollars in stock of the said railroad company for and in the name of the said town of Ellicott, and that
25 thereupon the said Newland deliver to the plaintiffs the said bonds now in his possession in payment for said stock, and for such further or other order and judgment as to the court may seem just and equitable in the premises, with costs.

And the defendants ask the judgment and decree of this court, declaring that they are not authorized in law to make such or any subscription to the stock of said company for the said town of Ellicott, or to deliver or issue any bonds of said town of Ellicott to the plaintiff, and that the plaintiff pay their costs herein.

Dated November 23, 1875.

JUDSON W. BREED,
W. J. WEEKS,
EDWARD P. JONES,
ROBERT NEWLAND,
PETER C. DOYLE,
*Sec'y B. & J. R. R. Co.*
J. M. RICHMOND,
*Pres't B. & J. R. R. Co.*
BASS, CLEVELAND & BISSELL,
*Plaintiff's Attorneys.*
PORTER SHELDON,
*Defendant's Attorney.*

ERIE COUNTY,
*City of Buffalo, ss:*

Jewett M. Richmond, being duly sworn, says that he is the president of the Buffalo and Jamestown Railroad Company, the plaintiff in the foregoing case and submission; that the controversy in which the foregoing facts and submission have been agreed to is a real one, and the proceeding is in good faith, and instituted for the purpose of determining the rights of the parties thereto.

J. M. RICHMOND.

Sworn to before me, Dec. 21, 1875.

C. H. DANIELS,
*Notary Public, Erie Co., N. Y.*

26 Supreme court, State of New York.

At a general term of the supreme court, fourth judicial department, held at the court-house in the city of Rochester, Monroe County, on the twenty-first day of May, 1876:

Present, Hon. Joseph Mullin, presiding justice.
" E. Darwin Smith, } associate justices.
" John L. Talcott, }

THE BUFFALO AND JAMESTOWN RAILROAD Company *against* WALTER J. WEEKS, JUDSON W. BREED, Edward P. Jones, commissioners, and Robert Newland.

Judgment for the defendants, declaring that they are not authorized in law to make any subscription to the stock of the plaintiffs' company, for the town of Ellicott, or to deliver or issue any bonds of said town of Ellicott to the plaintiffs, and that the plaintiffs pay their costs in this action.

Opinion by Mullin, Smith, and Gilbert.
(Copy.)

B. F. FREEMAN,
*Sp Dp. Clerk.*

Filed May 25, 1876.

27 Supreme court.

THE BUFFALO AND JAMESTOWN RAILROAD Company, plaintiff, *against* WALTER J. WEEKS, JUDSON W. BREED, AND Edward P. Jones, commissioners, and Robert Newland, defendants. } Judgment. May 25, 1876.

This case having been brought on to be heard and determined upon an agreed case, before the general term of this court for the fourth judicial department, and after hearing George F. Comstock, of counsel for plaintiff, and Porter Sheldon, of counsel for defendants, said court did determine said case at a general term of said court, held at the court-house in the city of Rochester on the 21st day of May, 1876, and ordered judgment therein declaring that the said defendants are not authorized in law to make any subscription to the stock of the plaintiff's company for the town of Ellicott, or to deliver or issue any bonds of the town of Ellicott to the plaintiff, and that the plaintiff pay the costs of the defendants herein.

Now, on motion of Porter Sheldon, of counsel for defendants, it is adjudged that Walter J. Weeks, Judson W. Breed, and Edward P. Jones, commissioners, are not authorized in law to make any subscription to the stock of the plaintiff's company for the town of Ellicott, and that the defendants herein are not authorized in law to deliver or issue any bonds of the town of Ellicott to the plaintiff, and that the defendants have and recover of the plaintiff their costs herein, taxed at the sum of forty-eight and sixty-six one-hundredths dollars, and that they have execution therefor.

HERMAN SIXBEY,
*Clerk.*

Filed May 25, 1876, 1 p. m.

28 Supreme court, Chautauqua County.

THE BUFFALO AND JAMESTOWN RAILROAD Company *against* WALTER J. WEEKS, JUDSON W. BREED, AND Edward P. Jones, commissioners, and Robert Newland.

GENTLEMEN: You will please take notice that the plaintiff above named, the Buffalo and Jamestown Railroad Company, hereby appeals to the court of appeals from the judgment of the general term of this court herein entered in the office of the clerk of Chautauqua County, at Mayville, N. Y., on the twenty-fifth day of May, 1876, upon the agreed case of the parties hereto, in accordance with the prayer of the said defendants therein, and against said plaintiff, and for $48.66 costs as taxed, and from each and every part of said judgment.

Dated May 31, 1876.

Yours, &c.,

BASS, CLEVELAND & BISSELL,
*Plaintiff's Attorneys.*

To PORTER SHELDON, Esq.,
*Defendants' Attorneys*, and
HERMAN SIXBEY, Esq.,
*Clerk of Chautauqua County.*

Filed June 3, 1876.

29 Supreme court.

THE BUFFALO AND JAMESTOWN RAILROAD Company *against* WALTER J. WEEKS ET AL.

MULLIN, P. J.:

A consent of a majority in number and amount of the tax-payers of a town, that the bonds of the town may be issued in aid of the construction of a railroad within this State, in the way provided for by what is popularly known as the bonding act, gives no right to the railroad company that a court of law or equity will enforce against the town, because—

1st. The company is not bound to receive the bonds or to apply them or their proceeds in the construction of the road.

2d. It cannot compel the persons appointed to issue the bonds to sign and deliver them, for the same reason.

3d. Because they owe no duty at that stage of the proceedings to the railroad company.

Whether the tax-payers could compel the persons appointed to execute and deliver the bonds, is a question not before us, and need not be considered.

It was doubtless a defect in the bonding act that it did not provide some way to secure the application of the bonds or their proceeds to the construction of its railroad, and to enable it, before the subscription for stock in the name of the town, to compel the officers of the town to issue the bonds. That defect led to the adoption of chapter 907 of the laws of 1869.

30 That act provided that a majority in number and amount of the tax-payers whose names appeared on the last assessment roll of the town might apply to the county judge by petition, setting forth that they desired that the town might issue bonds to amount named, and invest the same or their proceeds in the stock or bonds of a railroad company in this State, named in the petition.

The duties of the county judge upon receipt of the petition are prescribed, and he is required to take proof of the matter alleged in the petition, and if they are proved to his satisfaction, he is then to adjudge that the facts so alleged are true, and cause such finding to be entered of record.

After this adjudication is made, the county judge is then to appoint commissioners, who are to execute bonds in the name of the town, and they are to subscribe in the name of the town for stock of such railroad company to the amount named in the petition of the tax-payers, and to pay for the same with the bonds or their proceeds.

By these provisions of the statute a duty is doubtless imposed upon the commissioners to subscribe for stock of the railroad company, to issue bonds with which or their proceeds to pay for the stock, which the courts may compel them to perform.

But there is no contract between the town or its commissioners and the railroad company that the letter can in any way enforce.

While the proceedings remained in this way the legislature might repeal the bonding act without violating the provision of the Constitution of the United States which forbids the States to pass any law impairing the obligation of contracts.

In 1870 the legislature passed an act (chapter 570 of the laws of that year) which declared that it should be competent for any corporation to aid, whose construction bonds shall have been authorized to be

31 issued by any municipal corporation, to enter into an agreement with the commissioners appointed to issue bonds, limiting and defining the times when and the proportions in which said bonds or their proceeds shall be delivered to said corporation, and the place or places where and the purposes for which such bonds or their proceeds shall be applied or used, and such agreement shall be valid in all courts and places.

And the commissioners shall not be compelled by any court to deliver such bonds or their proceeds to such railroad company until such agreement shall be executed, if required by them.

It will be seen that the legislature has not, by the act referred to, authorized the commissioners to agree with the railroad company to issue the bonds which the tax-payers have consented may be issued to the railroad campany; that duty is left to rest solely upon the consent of the tax-payers; so there has been at no time any contract by which the railroad company became entitled to the bonds.

The contract provided for by the section of the chapter 507, above cited, merely regulates the action of the commissioners and pre'cribes the purposes to which the railroad company shall apply the bonds or their proceeds.

The duty of the commissioners to issue bonds rests on the statute of 1869, and not upon the agreement authorized to be made by chapter 507.

When the section of the State constitution took effect that prohibits towns from issuing bonds, in aid of railroad companies, the right of the railroad company to enforce the delivery of the bonds was taken away.

It rests purely on the act of 1869, and not upon a contract between it and the town or its agents.

The commissioners therefore had no power to agree in and by the contract between them and the railroad company, dated the four-
32 teenth June, 1872, that when the company had located and constructed its road through the village of Jamestown, they would subscribe for the stock and issue bonds to pay for the same. The right of the railroad company to these bonds did not and could not rest on the agreement of the commissioners, but upon the statute of 1869 and the consent of the tax-payers.

When these were swept away by the constitutional provision, the rest of the provisions of the agreement of fourteenth June became inoperative.

There being no bonds that could be issued, they were relieved from the obligation to issue them.

Supreme court.

PATRICK FALCONER AND OTHERS
*against*
THE BUFFALO AND JAMESTOWN RAILROAD COMpany.

THE BUFFALO AND JAMESTOWN RAILROAD COMpany
*against*
WALTER WEEKS ET AL.

R. P. Marvin, for plaintiffs; Bass, Cleveland & Bissell, for defendants.

E. DARWIN SMITH, J.:

The questions presented in these cases depend primarily upon the construction of the petitions of the persons claiming to be a majority of the tax payers of the town of Ellicott.

In that petition is the following clause: "Your petitioners desire that the said town of Ellicott shall create and issue its bonds to the amount of two hundred thousand dollars, and invest the same, or
33 the proceeds thereof in the stock of the Buffalo and Jamestown Railroad Company, upon the conditions that the line of the railroad of said company, to be constructed from the city of Buffalo to the line of the State of Pennsylvania, in said county, shall be located and constructed through the village of Jamestown, in said town of Ellicott, before said bonds shall be delivered to said company or sold."

The object which the petitioners intended to secure by this condition I think was twofold. First, to secure the location of said railroad through the village of Jamestown; and secondly, to secure its construction and completion upon such line to and through the said village before the said bonds were to be used or sold.

The objection that it does not appear from the said petition that the Buffalo and Jamestown Railroad Company is a railroad company in this State, I think is waived by the provisions of the contract hereinafter mentioned, wherein the Buffalo and Jamestown Railroad Company, the party of the second part to said contract, is described as "a railroad corporation created and existing under and by virtue of the laws of this State."

The question upon the form of the petition in The People ex rel. Rogers vs. Spencer (55 N. Y., 1), was presented upon certiorari, and in

the opinion of Judge Andrews, who delivered the opinion of the court, it is stated "that the rights of third persons are not in question, and the court could, without injustice to any one, affirm the conclusion they had reached."

Any person acting under and in affirmance of such proceedings as valid, would be estopped, I think, from questioning their validity afterwards.

The town of Ellicott, through its commissioners, have, in the contract referred to, clearly recognized the proceedings before and adjudication of the county judge as valid, and are estopped from questioning them for defects in the said petition.

34 The railroad company was authorized under the act of the legislature of 1870, chap. 509, to contract with the railroad commissioners of the town of Ellicott to fix and define the time and terms upon which they would subscribe to the stock of said company, and issue the bonds of said town in payment therefor, and the said act declares that contracts so made shall be valid.

The provision makes valid the contracts so made against the commissioners, or the town they represent, so far as such contracts are not in violation of law, or exceed the powers of the commissioners.

The commissioners could not contract to subscribe for the stock of said railroad in violation of the condition of the petition subscribed by the tax-payers and addressed to the county judge, nor could such commissioners by contract enlarge their own powers. They could contract to issue such bonds, and subscribe for such stock, when said railroad should have been located through and completed to the village of Jamestown.

This would simply define the time and terms for the issue of such bonds. They could not provide for the issue of such bonds at any earlier period by executing them and delivering them conditionally in trust or otherwise. The subscription of said stock, and the issue of said bonds, could not lawfully take place until said railroad was completed to the village of Jamestown. Before said railroad was so completed the power of the said commissioners, and the power of the said town, to subscribe for said stock and to issue said bonds was entirely taken away by the amendment of the constitution which went into effect on the first day of January, 1875. These commissioners were public officers, acting under the authority of law, which was thus repealed before any vested right had accrued under it binding upon said town of Ellicott. The execution and delivery of said bonds to Augustus Allen and Robert

35 Newland, in trust for said parties as stated in the complaint and case, could not in any degree affect this question nor change the rights of the town. These bonds in the hands of the said trustees cannot lawfully be delivered to the said railroad company, and are absolutely null and void in the hands of the said trustees.

It follows, therefore, from these views, that the order dissolving the injunction in the suit of Falconer against said commissioners and others, defendants, was improperly dissolved, and the demurrer to said action erroneously sustained, and should be reversed and said injunction restored. The cause of action in said suit was clearly maintainable upon the merits within the case of Ayers vs. Lawrence (59 N. Y., 192), and in The Buffalo and Jamestown Railroad Company vs. Walter J. Weeks and others.

Judgment should be given for the defendants according to the prayer of said defendants in the said submitted case, with costs.

Mullin concurs; Gilbert dissents.

THE BUFFALO AND JAMESTOWN RAILROAD COMPANY
*against*
WALTER J. WEEKS.

GILBERT, J., dissenting:

The commissioners were authorized to subscribe in behalf of the town of Ellicott for two hundred thousand dollars of the stock of the railroad company, and to pay for the same by issuing the bonds of said town whenever that company should have performed the condition upon which the authority to make such subscription was granted,
36 namely, "that the line of the railroad should be located and constructed through the village of Jamestown, in said town of Ellicott." (Laws 1869, chap. 907; laws 1871, chap. 925.)

The commissioners made no formal subscription to the stock of the railroad company, but on the fourteenth of June, 1872, a written contract was entered into between the commissioners and the company, whereby the commissioners agreed that when the railroad company should have performed the condition aforesaid, they, as such commissioners, or their successors in office, would thereupon immediately subscribe, in the name of the said town of Ellicott, to the capital stock of said company, to the amount of two hundred thousand dollars, and pay for the same by delivering the bonds of said town in the same amount; and the railroad company agreed to receive said subscription and to receive said bonds in payment thereof.

The company did not perform the condition aforesaid until October, 1875; meantime and on the first of January, 1875, the amendment to article 8 of the constitution of this State, prohibiting any town from becoming, directly or indirectly, the owner of stock in any association or corporation, went into operation. (Const., art. 8, sec. 11.)

The said railroad company seeks a performance of the contract of June 14, 1872; but the commissioners insist that their power to perform it has been taken away by this amendment of the constitution.

By section 5 of the act of 1869, chap. 907, the commissioners were not only expressly empowered, but directed to subscribe for the stock, and to exchange the bonds of the town therefor at par, upon the condition stated.

By chap. 507 of the laws of 1870, the railroad company was empowered to enter into an agreement with the commissioners appointed to issue said bonds, limiting and defining the times when and the
37 proportions in which said bonds, or their proceeds, should be applied or used; and the act declared that any such agreement in writing, duly executed by such corporation and a majority of said commissioners, should in all courts and places be valid and effectual. It is argued on the part of the commissioners that said act did not confer upon them power to enter into an agreement, because the act limited their authority to issue bonds to a company in aid of whose railroad bonds had been authorized to be issued; and that the plaintiff was not such company, for the reason that, at the date of the agreement, the condition on which the authority to issue the bonds depended had not been performed.

Putting this objection in plain English, it is, that the conditional authority is no authority.

I think such a construction is obviously erroneous.

The language of the statute of 1870 justifies no discrimination between an authority granted upon condition or an unconditional one. All it

requires is, that the railroad company shall be one in aid of the construction of whose railroad proceedings had been taken with authorized bonds to be issued at any time.

Before the act of 1870 referred to was passed, the only authority on this subject was contained in the aforesaid act of 1869, which authorized the commissioners to subscribe for the stock and issue the bonds simultaneously.

That statute did not in terms authorize a condition to be imposed upon the power or duty of the commissioners to issue the bonds. But in 1871 the legislature amended the act of 1869, by providing that the petition of the tax-payers, which is the foundation of the authority to issue the bonds, might be absolute or conditional, and binding the railroad company, in case of its acceptance of a subscription founded upon a conditional petition, to the observance of the condition therein specified. (Laws 1871, chap. 925, sec. 1.)

38 I can find no limitation of the authority of the commissioners whereby they are required to withhold the issuing of the bonds until after the condition shall have been performed, and none has been pointed out. The only effect of making the petition conditional appears to be to impose a liability on the railroad company in case of an acceptance of the subscription. The authority of the commissioners to make the subscription and to issue the bonds, remains as it existed under the act of 1869, qualified only by the power of making the agreement respecting the issue of the bonds conferred by the act of 1870.

In other words, taking the statutes together, the meaning of them is, that the commissioners may withhold a sale or delivery to the railroad company of the bonds until the condition specified in the petition shall have been performed, or an agreement shall have been made which is compatible with the terms of the condition. It is evident that the legislature did not intend by the act of 1871 to take away the power of the commissioners, in case of a conditional petition, to make the agreement, because by the same act they amended the act of 1870, without making any change of the language whereby the power to make the agreement was conferred.

The authority to deliver the bonds being dependent upon the subscription for the stock, a power to make an agreement to deliver the bonds necessarily implies a power to agree to make the subscription at the same time the bonds are delivered. What is implied in a statute is as much a part of it as what is expressed.

Nor do I perceive any difference in legal effect between a subscription to the stock of a corporation, conditional in its terms, and a present agreement to subscribe upon the performance of the same condition.

39 In each case the contract is executory in its nature, and the party making it is not bound to take the stock unless the condition is performed.

That being so, I think the commissioners had authority either to wait until the condition had been performed before making the subscription, or to make a present agreement to subscribe upon the performance of the condition.

The only remaining questions arise upon the effect of the amendment of the constitution before referred to. A construction cannot be given to this provision which would make it operate retroactively so as to destroy or impair antecedent rights and interests which had become vested. That proposition is too well settled to need discussion. I think also that the language of the amendment admits of a construction which

would limit it to transactions occurring after its adoption, and exclude such previous acts as were authorized by existing laws.

Such is the most natural and honest construction, and we are inclined to think it should be applied in a case like this.

The question, however, must be decided, namely, whether the obligations assumed by or imposed upon the commissioners were subject to abrogation by legislative act or by constitutional amendment. Upon this subject it is contended, 1st. That the railroad company acquired no right to the bonds and the commissioners no right to subscribe for the stock until after the amendment of the constitution took effect; and, 2d. That the power reserved by the legislature to alter or repeal the acts incorporating the town and the railroad company, included the power to abrogate contracts made between them.

The answer to the first ground has been already intimated, namely: That the statute itself created the right and imposed the duty of subscribing for the stock and of issuing the bonds upon the performance of the condition imposed by the petition of the tax-payers, and
40 that by the agreement the assent of the town, through its agents, the commissioners, to the fulfillment of that obligation and duty, and of the railroad company to the performance of the condition, were manifested.

A perfect contract was thus formed on the part of the town to deliver the bonds in payment for the stock on performance of the condition, and on the part of the railroad company to receive such subscription on those terms, and issue the stock to the town. Unless, therefore, the amendment of the constitution referred to was an exercise of the power reserved to alter and repeal charters, the inviolability of that contract is secured by the provision of the Constitution of the United States, that "no State shall pass any law impairing the obligation of contracts." (Art. 1, sec. 10.)

No doubt the power reserved may be exercised by the people, notwithstanding it has been reserved to the legislature. (Re Oliver Lee's B'k, 21 N. Y., 9.)

That the amendment was not an exercise of that power, however, I think is clear.

The contract formed no part of the charter of either the town or the railroad company. It was outside of, and collateral to both. The charters are contracts with the State, and the reserved power alluded to is limited to those contracts, and does not embrace contracts authorized by laws in force at the time of the making thereof, made by corporations with each other or with third persons.

A repeal of a charter would not discharge debts or obligations due to the corporation. They would form part of the assets of the defunct body, and would be administered for the benefit of the creditors (if any) and stockholders of the corporation at the time of its dissolution.

How then can such repeal discharge debts or obligations due from the corporation?

41 A dissolved corporation, it is true, cannot be sued for the same reason that a dead man cannot. But its debts and obligations are not extinguished. Payment thereof will be enforced out of its assets, or by means of the personal liability of its members, or officers, if the charter created such liability.

An announcement of the doctrine that the repeal of the charter of a bank at once annuls its obligation to other banks, would create no little alarm as well as surprise. I am satisfied that such an interpretation of the language of the reserved power under consideration would not be

correct. While the State may alter or resume its own grant of corporate powers and franchises, it cannot impair the obligation of a contract between the corporation and a third party, whether the latter be an individual or a corporation. (Fletcher vs. Peck, 6 Cranch, 133; Green vs. Biddle, 8 Wheat., 1; Aspinwall et al. vs. Com'rs of Davies, 22 How., 364; Cooley Const. Lim., 290.) In the case in the 22d How. it was made the duty of county commissioners by statute to subscribe for the stock of a railroad company, if the majority of the qualified voters at an election determined in favor of the subscription.

The election took place in March, 1849. In November, 1851, a new State constitution took effect, containing the prohibition that "no county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription." The commissioners made the subscription and issued bonds for it after the last-mentioned date.

It was insisted that the subscription became complete when at the election a majority of the votes was cast in its favor, and did not require the form of a subscription on the books of the company.

The Supreme Court of the United States held otherwise, but
42 also held that if there had been a subscription obligatory upon the parties, the contract thus created would have been protected by the Constitution of the United States, as it would then have been complete before the constitutional prohibition. In this case the power remained wholly unexercised until after the new constitution took effect, and for their failure to perform the duty enjoined upon them the commissioners might be personally liable, although no liability attached to the county. In the case before us there was an authorized agreement to execute the power. I think that fact makes a well defined and just distinction between the two cases.

It has been said that the amendment of the constitution operated as a revocation of the authority vested in the commissioners. But that merely begs the question. While it is true, as a general proposition, that a derivative authority does not survive the original authority, yet that principle could not be applied in a case like this without producing manifest injustice.

Here the railroad company have made large expenditures in constructing their road, in reliance upon the powers of the commissioners under a valid agreement made with them while such powers were in full force.

They thus acquired an interest in the execution of the power, which a revocation of it would not divest. The power became one coupled with an interest, which is not revocable at the will of the grantor. (Bell Com., 488, 490, 5 ed.; Story Ag., § 477; Hunt vs. Rousmanier, adm., 8 Wheat., 174.)

In the last case cited, Ch. J. Marshall remarked: "We know that a power to sell for the benefit of B, engrafted on an estate conveyed to A, may be exercised at any time, and is not affected by the death of the person who created it. It is then a power coupled with an interest, although the person to whom it is given has no interest in its exercise." (See also Franklin vs. Osgood, 14 J. R., 553; Jackson ex dure Hunt vs. Ferris, 15 id., 346.)

43 I am of the opinion, for the reasons stated, that in this case the agreement to subscribe was, in judgment of law, equivalent to an actual subscription, and that thereby the contract which the commissioners were authorized to make became complete before the amendment of the constitution took effect.

My conclusion, therefore, is that the railroad company is entitled to a

delivery of the bonds on tendering the stock, notwithstanding the condition on which such right accrued was not performed until after the constitutional amendment took effect, and that it is the duty of the defendant Newland to deliver the bonds to the railroad company upon the receipt of the certificates for an equal amount of stock. No further subscription to the stock is necessary, and I am of opinion that as the formal act of subscribing on the book of the company may possibly be now prohibited, it is not the duty of the commissioners to make any further subscription.

Judgment should be entered in favor of the railroad company accordingly.

PATRICK FALCONER AND OTHERS
*vs.*
THE BUFFALO AND JAMESTOWN R. CO.

The order appealed from should be affirmed, with $10 costs and disbursements.

44 At a special term of the supreme court held at the city & county hall, in the city of Buffalo, on the 27th day of October, 1877.

Present, Hon. Albert Haight, justice.

THE BUFFALO & JAMESTOWN RAILROAD COMPANY
*against*
WALTER J. WEEKS, JUDSON W. BREED, EDWARD P. JONES, commissioners, &c., and Robert Newland.

This case having been brought on upon the remittitur herein sent down from the court of appeals and now filed in this court, by which remittitur it appeared that an apeal was taken by the plaintiff from the judgment of this court to the said court of appeals, and that said judgment has been affirmed in all things, and the same has been directed by said court to this court to be carried into effect according to law:

Now, therefore, on motion of Porter Sheldon, attorney for said defendants, it is ordered and adjudged that the judgments of said court of appeals in said action be, and the same hereby is, made the judgment of this court, and that the defendants have execution for the costs in said judgment, when adjusted by the clerk of this court, as well
45 as the amount adjusted and inserted in said judgment entered on the 25th day of May, 1876, and this order be annexed to the judgment record herein.

It is further adjudged that the said defendants recover of said plaintiff the costs on said appeal, adjusted at $98.07.

J. J. ALDRICH, *Clerk.*

Filed Oct. 31, 1877, at 1 p. m.

(Indorsed:) Erie special term. Oct. 27, 1877. The within order granted & ordered filed, & judg't entered in Chautauqua County. LeRoy S. Oatman, sp. dp. cl'k.

46 CHAUTAUQUA COUNTY,
*Clerk's Office, ss:*

I have compared the foregoing with an original agreed case and submission (except opinions by general-term justices, which said opinions are not included in the original record), notice of appeal to court of appeals, remittitur therefrom to the supreme court, and judgment, remaining on file in this office, and do hereby certify that the same are true copies of said originals of the whole thereof, and the times of filing the same.

In testimony whereof I have hereunto set my name and affixed my official seal this 8th day of January, 1878.

J. J. ALDRICH, *Clerk.*

(Indorsement on cover:) No. 1059. The Buffalo and Jamestown Railroad Company, plaintiff in error, vs. Walter J. Weeks, Judson W. Breed, Edward P. Jones, & Robert Newland. Remittitur. New York sup. court. Filed 25th March, 1878.

REC 1059—3